

## GORDON WIGNALL



*"He is a winner with clients - he's easy to work with and is approachable... great with the clients and builds a real rapport with the court."*

**Chambers UK Bar Guide [2018]**

*"A junior of choice for environment"; "His knowledge of his area is extremely deep and extensive."*

**Chambers UK Bar Guide [2017]**

*"His written work is second to none and he has an encyclopaedic knowledge of environmental law"*

**Legal 500 [2017]**

*"He has an analytical mind and detailed approach."*

**Chambers UK Bar Guide [2016]**

*"A great barrister who is really commercially minded, very bright and good with clients".*

**Chambers UK Bar Directory [2015]**

(Further recommendations are printed at the end of this c.v.)

**Year of Call:** 1987

### Education

University of Oxford – MA (Latin & Greek)

University of Westminster – Diploma in Law

Gray's Inn - Norman Tapp memorial prizewinner (mooting/advocacy skills)

Grays Inn - Karmel Scholarship prizewinner (commercial law)

King's College, London University - Diploma in EU Law, Diploma in EU Competition Law, MA in EU Competition Law

### Appointments, etc.

CEDR trained mediator; formerly a part-time employment judge

## **ENVIRONMENTAL & PLANNING LAW CV (June 2018)**

Gordon Wignall has a specialist understanding of all aspects of environmental and planning work. He has a particular interest in the waste, recycling and associated industries and in the agricultural and related sectors (extending to habitats law). Pollution issues, including contaminated land, flooding, noise, odour, fire and air quality, constitute a significant part of his work. He is a recognised expert in litigation relating to private, public and statutory nuisance (including s.82 proceedings) and has written and lectured in the area.

Gordon had an unusual training which encompassed both complex commercial law as well as serious crime. This has given him a strong grounding in both written and oral advocacy and there is a balanced application of both in his practice. He is familiar with conflicts of laws and arbitration principles. He advises and provides representation in overlapping areas which have environmental issues as their subject matter, including contract and professional negligence. He has been instructed in many cases covered by a group litigation order.

Gordon is accustomed to working under pressure and as part of a team. As well as acting for private operators on the receiving end of applications for injunctive relief, he has obtained injunctions on behalf of local authorities where other remedies have proved inadequate. He is familiar with issues of privacy and confidentiality and has been instructed in proceedings before the Investigatory Powers Tribunal (RIPA surveillance powers).

He is very familiar with costs issues in all courts tribunals, also being a recognised advocate in costs cases. Even at initial stages of his instructions he will have in mind the likelihood of the recovery of costs. He has advised and provided representation in respect of the separate liabilities of group undertakings and their individual officers (including piercing the corporate veil).

Recent environmental cases include a 9-day hearing in a widely publicised residential noise nuisance dispute, a judicial review challenge to the environmental regulation of the waste oil industry, ongoing group litigation about manufacturing from timber and about rendering and a multi-handed Crown Court prosecution in the asbestos sector.

He is a co-author of the Chambers 2018 Environmental Law Guide (edited Hogan Lovells).

Not surprisingly, Gordon is especially pleased to be able to assist in claims where complex expert evidence needs to be presented or disputed. This may arise in any of the areas in which he provides and has provided assistance, whether in civil, criminal or administrative proceedings, including the following:

### Experience by reference to subject areas, businesses and trades

- Agricultural feed production
- Animal rendering (classes I and III)
- Aluminium foundries
- Biomass operators
- Brassica growers
- Car manufacturing
- Colliery working (and spoil heaps)
- Combined heat and plant operators

- Composting plants
- Construction sites
- Controlled waste
- Demolition contractors
- Demolition waste
- Developers
- Diesel spills
- Dog owners
- Fertiliser manufacturers
- Flooding
- Gamekeepers
- Garages
- Highways
- Kennels
- Kerosene spills
- Knackermen
- Land drainage
- Landfill operators
- Landowners
- Meat processors
- Motor racing circuits (racing car, motocross and motorcycle)
- Motorcycling training venues
- Music festivals
- Oil spills
- Paint manufacturers
- Paper/cardboard collection
- Potato washing plants
- Public houses
- Rendering operators
- Reservoirs
- Residential occupiers and their premises
- Retail development
- Scrap yards
- Septic tanks
- Sewage plants
- Sludge handlers
- Smoke, flues, chimneys and stacks
- Spoil heaps
- Steel foundries
- Storage tanks
- Subsidence
- Transportation
- Trees
- Tree root subsidence and 'heave'
- Turbine operators
- Waste brokers
- Waste oil (processed and re-refined products)
- Waste paper brokers and exporters
- Waste transfer stations
- Waste water plants
- WEEE

## Civil law and statutory nuisance claims

Gordon provides pre-litigation advice, such as for producers seeking approval for end-of-waste status and for parties to leasehold agreements (advising for instance whether a break notice or notice of termination has been validly served). He has experience in contractual and also in trespass / boundary disputes, which he uses in appropriate cases. He has presented numerous claims under the group litigation principles used in the civil courts (he has recently provided claimant representation in the VW emissions proceedings).

Many claims in which Gordon is involved concern issues relevant to pollution. He has an extensive track record of private, public and statutory nuisance proceedings, litigating the following issues, many of which are recurrent topics:

- Compensation levels in cases of amenity damage
- Compensation where remediation is required
- Compensation in 'stigma' cases – oil, kerosene and other spills
- The corporate veil: when can it be drawn aside?
- Discovery of documents in both criminal and civil contexts
- The existence of alleged easements to pollute (noise and odour)
- Evidence corroborating complaints of nuisance: its legitimate extent
- Flooding, including 'the common enemy' (Gordon's Court of Appeal case on the 'common enemy' as a defence to flooding remaining the lead authority on the topic); he is familiar with the initial expert evidence required to establish causation
- Group Litigation and Group Litigation Orders
- Leases: can a break clause be activated where there is an issue as to pollution?
- Leases: is the change in an energy subsidy a frustrating event?
- Injunctive relief: when should it be granted?
- Injunctive relief: is compensation an adequate alternative?
- Injunctive relief: a simple order of abatement, or should works be required?
- Interim injunctive relief
- Why make a claim in negligence if there is a claim in nuisance?
- Pre-action disclosure
- Prescription – has the right to pollute been established?
- Public nuisance as a means of defeating a right to prescription
- 'Reasonable user' as a defence in nuisance
- Sentencing under the environmental sentencing guidelines
- Statutory nuisance and 'best practicable means'
- Strict liability for fire, spills and other dangerous activities
- Threshold considerations: is there a nuisance at all?
- costs budgeting and liability for adverse costs

Gordon is pleased to assist in smaller statutory nuisance cases (as well as in s.82 proceedings). His experience includes the following (at first instance or on appeal), often requiring detailed expert evidence as to both the threshold requirements and the question of 'best practicable means':

- noise from car works, garages, racing tracks, schools, dogs, kennels, construction works, parties, refrigeration units, festivals and pubs
- odours, smoke and dust from food plants, biomass units, composting plants, potato washing units, sewage treatment plants, foundries, renderers and other works.

## Defending environmental prosecutions

Gordon has represented defendants (both corporate and individuals) in the Magistrates Court, the Crown Court and on appeal, including in the Court of Appeal. (His reported cases concerning the admissibility of evidence are in the context of murder and were decided on appeal to the Privy Council.)

The criminal cases he has undertaken have been concerned with various offences arising out of the management and handling of waste, asbestos, fraud, breaches of abatement notices contrary to the statutory nuisance regime, offences contrary to the Control of Pollution Act and HSE prosecutions.

Gordon was instructed in the Crown Court in the first major prosecution by the Environment Agency concerning the transfrontier shipment of waste, and he has practical experience in transfrontier issues relating to waste electrical products, metals and paper products. He has advised or provided representation for corporate and individual clients in respect of shipments destined for Rotterdam, Saudi Arabia, West Africa, Cuba and South America. TFS prosecutions have concerned issues which include the meaning of "waste" and the factual question whether there has been 'contamination'. His knowledge of international trade documentation has been of considerable assistance.

The criminal proceedings in which Gordon has been instructed have required him to address the following specific issues (all in the context of prosecutions concerning waste sectors mentioned above in the subject areas listed in this c.v.):

- Allegations of consent, connivance and neglect against directors and other officers
- 'Blending' of waste (flock and trommel fines)
- Asbestos
- Causes of pollution
- Corporate offences
- Costs recovery
- 'Culpability' (deliberate, reckless, negligent etc.)
- Disclosure (an extensive application process in one case finally resulting in the offering of no evidence by the prosecution)
- Environment Agency 'under-enforcement' and its consequences for defendants
- Fires
- Fraud charges (with no evidence being offered in one case on the entering of pleas)
- 'Harm' categorisation
- Illegal landfills
- Landfill tax avoidance
- Landfill cover
- Landfill spreading
- 'Mis-descriptions' of waste: incorrect waste codes
- Operating waste sites without a permit or outside the terms of a permit
- Operating waste sites outside the terms of permitting exemptions
- Ownership of land used by others to spread processed waste
- Sentencing under the Environmental Offences Guidelines 2014 (including mitigation as to immediate / suspended terms of imprisonment)
- Storage of waste in excessive quantities

- Transfrontier shipments of waste consignments, including the consideration of commercial and export documentation relevant to different jurisdictions
- Regulations 12, 38 and 41, Environmental Permitting Regulations 2010 (and successor regulations)
- Section 33, Environmental Protection Act 1990
- Section 82 proceedings (summary proceedings by persons aggrieved of a statutory nuisance)

#### Public (administrative) law proceedings / permits, licences and PINS

Gordon's environmental work includes judicial review and statutory appeals under the planning regime, including 'conventional' planning cases (such as housing or retail development). He was involved in a recent challenge to the regulation of the waste oil industry.

His PINS cases also concern suspension notices, enforcement notices and works notices, as well as waste exemptions. He has acted for many of the most well-known recycling companies active in England & Wales. The question whether to apply for judicial review of a regulatory notice or to initiate a statutory appeal (or even both) can be a very difficult one, a matter on which he has advised and provided representation on a number of occasions.

Gordon was counsel for the successful claimant in the main judicial review authority concerning enforcement notices under the Permitting Regulations, and continues to have an in-depth understanding of the circumstances in which an urgent application to the High Court is necessary in order to keep a business alive when faced with a regulatory notice. He also has experience of the practical matters necessary to contest the rarely-used provisions of the Water Resources Act used by the Environment Agency to protect water from pollution.

Gordon is familiar with the correct application of the Core Guidance procedures invoked by the Environment Agency when rejecting an application for an environmental permit on grounds of competence.

Planning appeal work for waste and recycling clients has included issues relating to noise, applications to introduce machinery, agricultural waste, spoil and landfill sites and WEEE.

Gordon has advised applicants in many regulatory areas where a permit or licence is required, including those issued by the Environment Agency and Natural England. He has acquired a good working understanding over the years of English and Welsh law as it has developed under EU law, including the Waste Framework Directive, Industrial Emissions Directive, Air Quality Directive, By-Products Regulations, Water Framework Directive, Habitats Directive and the Birds Directive. He is very familiar with canons of both domestic and EU legislative interpretation and their application to detailed facts.

As to permitting exemptions, Gordon has successfully presented judicial review applications in the High Court in which it has been alleged that the UK has not transposed the exemption provisions of the Waste Framework Directive correctly. He has advised processors and re-refiners of waste oils as to the scope of various provisions emanating from the Waste Framework Directive. He has acted for various waste brokers and transporters.

Gordon has some 30 years' experience of judicial review, case stated and statutory appeal proceedings in a number of the subject areas set out above at the beginning of this c.v. Particular administrative / statutory appeal issues have included the following:

- Aarhus and costs issues
- Aarhus and public participation
- The boundaries of an “abuse of power” and legitimate expectations
- ‘Better regulation’ and regulatory reform issues
- The ‘duty to give reasons’
- End of waste
- Challenges to regulatory enforcement decisions and notices
- Environmental permits and ‘competence’ of the operator
- The EU Charter of Fundamental Rights and its application
- Exemptions under the Environmental Permitting Regulations
- Licences to shoot under the Deer Act and habitats legislation
- Local authority housing land supply
- ‘Localism’
- NPPF (‘National planning policy framework’)
- The overall proportionality of a decision under challenge
- Statutory interpretations and the meaning of rules and regulations
- Statutory nuisance: judicial review or case stated on appeal?
- Sustainable development
- Whether a decision is unreasonable (in a legal sense)
- Waste Framework Directive issues

Whilst residential and retail planning appeals have been part of his practice these too tend to include issues relating to the Aarhus convention and EU-related matters such as Environmental Impact Assessments.

### **Additional**

In appropriate circumstances direct access instructions are accepted, including at the pre-issue stage of litigation. Referrals can be provided to suitably qualified solicitors.

Gordon has been a joint author of the commended website “Waste Management Permit Lawyers” which contains information as to permitting and pollution control.

### **RECOMMENDATIONS**

*“He is a winner with clients - he's easy to work with and is approachable.”*

*“Gordon is a pleasure to work with. He is great with the clients and builds a real rapport with the court. He is a great guy to have on a team dealing with a difficult case. He is a go-to barrister on group action claims.”*

**Chambers UK Bar Guide [2018]**

*“A junior of choice for environment and a real heavyweight for private nuisance matters.”*

*“Has a practice with a strong focus on pollution claims and challenges to Environment Agency decisions. His knowledge of his area is extremely deep and extensive.”*

**Chambers UK Bar Guide [2017]**

*“A respected junior who is very active on environmental and waste permitting and recycling issues”.*

*“He has an analytical mind and detailed approach.”*

## **Chambers UK Bar Guide [2016]**

*"A great barrister who is really commercially minded, very bright and good with clients".*

### **Chambers UK Bar Directory [2015]**

*"An experienced junior who has an extensive planning and environmental practice. The majority of his environmental work involves regulatory disputes with local authorities, planning authorities and the Environment Agency... He's a very experienced and knowledgeable barrister, and has a very pleasant manner."*

### **Chambers UK Bar Directory [2015]**

*"A depth of knowledge that makes him stand out".*

### **Legal 500 [2015]**

*"He is very down to earth and gets on well with solicitors and clients...He is very knowledgeable, and he is able to put across complex points in understandable English".*

### **Chambers UK Bar Directory [2014]**

*"He has a hands-on and very practical approach".*

### **Legal 500 [2014]**